

Telecom 2 Ltd Commercial Website Contract

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, except if the context requires otherwise, words and expressions are as defined in 1.3 Definitions.

1.2. Definitions

"Agreement" the agreement between TELECOM2 and the customer comprising these terms and conditions and the Schedules; Each application made via the TELECOM2 website will constitute a separate agreement.

"Commencement date" the date the application is made on the TELECOM2 website.

"Communications Networks" the communications networks run by the Communications Network Operators and used by TELECOM2 and any other network over which the communication of information may be necessary for the purposes of provision of or relating to the Services;

"Communications Network Operator" the providers of the Communications Networks;

"Customer" the applicant for the products and services offered on the TELECOM2 website

"Customer Services" any and all products and/or services utilizing the Services and/or any ancillary products and/or services thereto supplied by the Customer to third parties including, without limitation, to Users;

"Minimum contract term" One year

"OFCOM" the Office of Communications; the regulator for the United Kingdom communications industries;

"Payments" Any outstanding monies will be taken monthly, automatically by "www.telecom2.net" on 5th of the month. Rental charges will be taken in advance, and usage charges taken in arrears. Usage period is from 1st of the month through to the last day of the month. TELECOM2 reserve the right to alter monthly payments in accordance with our pricing structure. You will be notified in advance of changes to your monthly payments, and this information will also be displayed on our website in the "My Account" area.

"PhonepayPlus" the agency appointed by OFCOM to enforce and administer a Code of Practice for Premium Rate Services approved under Section 121 of the Communications Act 2003 and/or PhonepayPlus Limited (or any similar body that may be appointed in addition to or substitution for it in the UK);

"Public Networks" the networks used by the Communications Networks Operators and any other network over which the communication of information may be necessary for the purposes of providing or relating to the Services;

"Regulations" all enactments, ordinances, pacts, decrees, treaties, codes, directives, orders, notices or official published plans or policies with legal or actual force in any geographical area and/or over any class of persons and all codes of practice relative to the provision of the Services, TELECOM2, the Customer and including but not limited to Regulations including but not limited to The Communications Act 2003, The PhonepayPlus Code of Practice, The CAP Code, The BCAP Code, The Privacy and Electronic Communications Regulations 2003, Data Protection Act 1998 and OFCOM numbering plan and successors;

"Regulatory Authority" any person or authority (including any nation, national or local governmental or international organisation or any subdivision or agency or executive arm of any of them, any court or judicial officer or any securities exchange (with legal or defacto power to impose and/or enforce compliance with any Regulations including without limitation PhonepayPlus and OFCOM;

"Schedule(s)" the schedule(s) appended to these terms and conditions as may be amended from time to time with the agreement of the parties as confirmed by application via the website or by service according to this agreement

"Service Charges" the charges for the provision of the Services due to TELECOM2 from the Customer, and collected from the Customer on TELECOM2's behalf [by the Customer] in accordance with the provisions of this Agreement;

"Service Payments" the payments due to the Customer from TELECOM2 and collected from TELECOM2 by the Customer, in respect of usage of the Services;

"Services" the services, products and or documentation that may be provided to the Customer by TELECOM2, as

detailed in the acknowledgment of the application made on the TELECOM2 Website subject to these terms and conditions and any Service(s) specific terms and conditions set out in the Schedule(s);

"Territory" United Kingdom

"User" the individual or end-user person using the Services.

1.3. References to clauses and schedules are to clauses of, and the schedules to, this Agreement. Clause, schedule and paragraph headings shall not affect interpretation of this Agreement.

1.4. The Schedule(s) are incorporated into and form part of this Agreement.

1.5. In the event of any inconsistency between the provisions of these terms and conditions and any Service(s) specific terms set out in the Schedule(s) then these terms and conditions shall prevail

1.6. Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted or consolidated and all statutory instruments or orders made pursuant to it.

1.7. Clause headings are for reference purposes only and do not affect the validity, interpretation or enforceability of this Agreement.

2. COMMENCEMENT AND DURATION

2.1. This Agreement shall commence on the Commencement Date and subject to earlier termination pursuant to the terms of this Agreement shall continue in force for the Minimum Contract Term and afterwards until terminated either party giving no less than three months' notice.

3. SCOPE

3.1. Nothing in this Agreement shall prevent TELECOM2 from supplying the Services to other clients in the Territory either directly or via other Customers or agents. All rights not specifically and expressly granted to the Customer under this Agreement are reserved to TELECOM2.

3.3. TELECOM2, in consideration of the Customer's obligations under this Agreement, grants to the Customer a personal, non-transferable, non-exclusive right to use, market [and support] the Services only to the extent strictly necessary for the Customer to perform its obligations under this Agreement and for no other purpose whatsoever.

4. SERVICE MANAGEMENT

4.1. Both parties shall promptly deal with any complaint or request with respect to the Service received from Users, Customers, Communications Networks Operators and/or Regulatory Authorities. The Customer shall notify Telecom2 immediately on receipt if such a complaint or request is received by it and supply full details of the complaint or request.

4.2. Either TELECOM2 or the Customer shall at any time during the Term be entitled to request from the other party such information as may be reasonably required in order to establish to its satisfaction the discharge by the other party of its obligations under this Agreement including without limitation its obligations under this clause 4. The party receiving such request for information shall be obliged to provide such information within 7 days of receipt of request. Notwithstanding anything to the contrary in this Agreement TELECOM2 and/or the Customer shall be entitled to pass such information (or any part thereof) to any Regulatory Authority who may require production of the same

4.3. Without prejudice to TELECOM2's rights under this Agreement the parties hereby expressly agree that TELECOM2 shall be entitled without responsibility or liability including without limitation to the Customer to suspend access to the Services and/ or to cease to provide the Services in whole or in part at any time and without notice as the case may be in the event of a direction to do so from a Communications Networks Operator or Regulatory Authority or if in the opinion of TELECOM2 there is a genuine risk of such a direction or for any other reason in its sole discretion and TELECOM2 reserves the right to regard any breach of the provisions of this Clause 4 as a material breach of this Agreement as defined in Clause 11.1.1 hereof.

4.4. TELECOM2 does not guarantee that the Services will be provided uninterrupted or error free.

5. CUSTOMER OBLIGATIONS

5.1. The Customer shall at all times and throughout the Term and shall procure that the Customers (and each of them) shall at all times and throughout the Term:-

5.1.1. Act in accordance with all Regulations;

5.1.2. Not provide any Customer Services which may in the opinion of TELECOM2 (in its sole discretion) place TELECOM2 or the Communications Networks Operators in breach of its or their obligations under any Regulations and/or bring TELECOM2 or the Communications Networks Operators into disrepute;

5.1.3. Not in any publicity or other promotional activity state or imply any approval by any of the Communications Networks Operators or by TELECOM2 of any Customer Services, nor use any intellectual property rights of TELECOM2 or any of the Communications Network Operators (including but not limited to trade marks or brand names) nor refer to the Communications Networks Operators or TELECOM2 without the express written approval of a duly authorised officer of TELECOM2 in each case;

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- 5.1.4. Not at any time provide any Customer Services the provision of which is or may be a criminal offence or which infringes or may infringe any third party intellectual property rights or is or may otherwise be unlawful or the provision which is or may be contrary to any Regulations;
- 5.1.5. Will immediately on receipt of written notice cease to provide any Customer Services which TELECOM2 considers in its sole discretion to be in breach of this Agreement;
- 5.1.6. Provide to TELECOM2 such assistance and/ or information as TELECOM2 may require in order to comply with all or any requirements at any time and from time to time imposed by any Regulations or by any Regulatory Authority or by its obligations to the Communications Networks Operators, or by any requirements which are or may be applicable to or affect the Customer's use of the Services;
- 5.1.7. Ensure that before any Customer Services are made available by the Customer all such rights, authorisations, licence, consents and permissions as may be required by the Regulations or otherwise have been complied with in full and for the avoidance of doubt TELECOM2 shall have no obligation to provide the Services or any part of them until such time as the Customer has complied with all such obligations to the reasonable satisfaction of TELECOM2;
- 5.1.8. Not provide services to Users where the total cost to the User is deemed to be excessive by the Communications Networks Operators and/or any Regulatory Authority;
- 5.1.9. Provide TELECOM2 with such information relating to any Customer Services or any use of the Services and associated TELECOM2 services as TELECOM2 may request;
- 5.1.10. Comply immediately with TELECOM2's directions on required regulatory changes issued from time to time regarding or relating to the Services and/or the Customers Service;
- 5.1.11. Promptly provide to any Regulatory Authority including without limitation PHONEPAYPLUS such information or material relating to any Customer Services as the Regulatory Authority may request from either TELECOM2, the Customer or the Customer;
- 5.1.12. Ensure that the Customer is solely responsible for the Services provided to Users and the Customer shall take all appropriate measures to ensure that they are not inappropriate for the User, meaning anything that may be a criminal offence or may or does violate the rights of a third party including but not limited to privacy, publicity, intellectual property rights or anything that could reasonably be interpreted as obscene, defamatory, libellous or discriminatory or otherwise may be unlawful or the provision of which may be contrary to any Regulations;
- 5.1.13. Not cause, nor knowingly or recklessly allow others to cause, any nuisance, annoyance or inconvenience, whether to TELECOM2, the Communications Networks Operators or Users;
- 5.1.14. Not appoint any third party partner, dealer, distributor or agent to promote, market and/or sell the Services without the prior written consent of TELECOM2 in each case such consent not to be unreasonably withheld and in the event that TELECOM2 shall provide such consent the Customer or Customer, as the case may be, shall ensure that all agreements with third party partners, dealers, distributors or agents shall include terms and conditions to ensure that such Customers, third party partners, dealers, distributors or agents are bound by terms and conditions no less onerous than those of this Agreement and provided further that the Customer and/or Customer shall provide any such third party partner, dealer, distributor or agent with full details of the PHONEPAYPLUS code and its application;
- 5.1.15. Not alter, adapt or modify the Services in any way without the prior written consent of TELECOM2 in each case;
- 5.1.16. Notify TELECOM2 of any change to the Customer's name and/or address and/or contact numbers;
- 5.1.17. If a number has no services associated, ensure that minimum minutes generated by the number exceeds 50 minutes per month on pence per minute number, and exceeds 50 calls per month for a pence per call number. Customer agrees that if per number this target is not reached, TELECOM2 has the right to take back the number.
- 5.1.18. Any invoices for revenue earned must reach TELECOM2 no later than 10 working days from last day of the relevant month..
- 5.2. The Customer shall not be entitled to sell or enter into any negotiations or contracts for the sale of the Services on behalf of TELECOM2 or pledge the credit of TELECOM2 or make any contracts or commitments on behalf of or bind TELECOM2 in any way.
- 6. TELECOM2'S RIGHTS AND OBLIGATIONS**
- 6.1. Subject always to the terms of this Agreement, TELECOM2 shall provide the products and Services to the Customer.
- 6.2. Without prejudice to TELECOM2's other rights under this Agreement, TELECOM2 shall, subject to informing the Customer and giving them the opportunity to rectify any breach with immediate effect:
- 6.2.1. Require the immediate cessation of the provision of any Customer Services or other data, matter or thing which it may determine to have been or to be in breach of this Agreement and/or any Regulations;
- 6.2.2. Bar access to or cease to provide the Services or any part thereof and/ or withhold Service payments due to the Customer at any time if;
- (a) The Customer is or has been in breach or there is reasonable evidence that the Customer is allegedly in breach or may be or have been in breach of this Agreement and/or any Regulations or is not or has not been providing products and/or services which the Communications Networks Operators define as bona fide to the Users in the event of a direction from a Communications Networks Operator or Regulatory Authority or if in the reasonable opinion of TELECOM2 there is a genuine risk of such a direction; or
- (b) Any person or the Customer is doing or suffering anything to be done which in TELECOM2's reasonable opinion relates to the Services and
- (c) which in TELECOM2's reasonable opinion (a) is or was unlawful, (b) has brought brings or may bring TELECOM2's and/or the Communications Networks Operators' services into disrepute, or (c) was is or may be prejudicial to TELECOM2's commercial interests; or
- (d) With reasonable grounds either any Communications Networks Operators or TELECOM2 objects to the involvement of any person either any Communications Networks Operators or TELECOM2 deems to be unsuitable to be connected with or involved in the utilisation of the Services and the Customer does not cease using such person or prevent such person being connected with or involved in such use of the Services following written notice of such objection being given to the Customer.
- (e) And in each case TELECOM2 shall not be liable to the Customer for barring access to the Services or any part thereof or for withholding Service payments pursuant to this clause 6. TELECOM2's rights to bar access or to cease to provide the Services and/or withhold payment pursuant to this clause 6.3 may be exercised for such period as TELECOM2 in its sole discretion sees fit. If the period of such withholding, bar or cessation or any other barring, cessation, suspension or delay in providing the Services or any part thereof pursuant to any its rights under this Agreement exceeds seven days then TELECOM2 shall (without prejudice to its other rights or remedies) have the right forthwith upon notice to the Customer to terminate this Agreement.
- 6.3. Where TELECOM2 or the Communications Networks Operators have been advised by a Regulatory Authority or the Communications Networks Operators (as applicable) that the Customer or the Customer may be, is or has been in breach of any Regulations, TELECOM2 shall have the right to withhold sums payable to the Customer.
- 6.4. TELECOM2 may temporarily suspend access to the Services, if at any time the use of the Services by the Customer is such that it causes congestion to the Services and/ or the Communications Networks Operators or disrupts other services or which is, in the reasonable opinion of TELECOM2, excessive. In such circumstances TELECOM2 shall not be liable to the Customer for such suspension. TELECOM2 shall inform the Customer as soon as reasonably possible of any temporary suspension of access to the Services
- 6.5. TELECOM2 shall use all reasonable endeavours to provide and maintain the Services to the Customer but TELECOM2 shall not be liable for any failure to provide and maintain the Service(s) in such manner if this arises from a technical or other failure in the Service(s), at Communications Network level.
- 6.6. TELECOM2 shall promptly investigate any complaint or request with respect to the Services received from the Customer, Communications Networks Operators and/or Regulatory Authorities.
- 6.7. Without prejudice to clause 6.11 TELECOM2 reserves the right from time to time to improve or alter the Services as it deems appropriate provided such changes do not substantially change the nature of the Services. TELECOM2 reserves the right to suspend access to part or all of the Services as required for the purposes of remedial or preventative maintenance or improvement of the Services without liability or responsibility to the Customer.
- 6.8. TELECOM2 reserves the right to promote their services in such manner as it deems appropriate but hereby agrees not to make reference in its published information to the Customers Services without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.
- 6.9. TELECOM2 shall not be obliged to give the Customer, Customers or Users or third parties sourced by the Customer any priority over any other clients of TELECOM2 with regard to the supply or delivery of the Services by TELECOM2.
- 6.10. The parties agree that in the event that there are any changes to the terms of the arrangements in place between TELECOM2 and the Communications Networks Operators which affect the provision of the Services under this Agreement TELECOM2 shall be entitled to make such changes to this Agreement including without limit as to service charges to reflect the changes in Communications Networks Operators arrangements provided that if the changes are material the Customer shall be entitled to give TELECOM2 notice to terminate effective from the date such changes are made or such other time as the parties may agree. TELECOM2 shall wherever reasonably practicable give the Customer reasonable notice of such proposed changes.

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- 6.11 TELECOM2 shall not be entitled to sell or enter into any negotiations or contracts for the sale of the Services on behalf of the Customer or pledge the credit of the Customer or make any contracts or commitments on behalf of or bind the Customer in any way.
- 6.13 TELECOM2 shall, subject to the Customer properly discharging its obligations under clause 5 in relation thereto, comply with any requirements at any time and from time to time imposed by any Regulations or by any Regulatory Authority.
- 6.14 Numbers allocated to Customers by TELECOM2 and not brought into use within three months of their being allocated may be withdrawn from use by TELECOM2 and may be allocated to different Customers. No refund shall be made in respect of any TELECOM2 charges incurred by the Customer for such withdrawn numbers up to the date of withdrawal.
- 6.15 TELECOM2 reserves the right to undertake such checks and investigations on a Customer as are required by regulation and statute and any others it thinks fit including but not limited to credit checking of a Customer and/or Customer and any individuals or other entities that may be connected or associated in any way with such Customer. The Customer agrees to provide all such assistance to TELECOM2 in undertaking such checks and investigations. TELECOM2 is not obliged to provide services or products to the customer prior to the satisfactory completion of such checks and may suspend service or terminate this agreement should checks within the term of the agreement not produce satisfactory results.
- 7. FINANCIAL PROVISIONS**
- 7.1 The Charges schedule sets out the particular Service Charges (if applicable) and Service Payments together with other charges for the provision of the Services and associated facilities. No charges for any Services shall be payable under this Agreement by one party to the other unless such services and charges are expressly referred to in this Agreement. Without prejudice to the provisions of the Schedule(s) in this respect the Customer shall pay to TELECOM2 all Service Charges and other charges within 30 days of the date of TELECOM2's invoice. Service Payments to the Customer from TELECOM2 shall be made within the later of 15 days after the end of the calendar month in which the Service was provided and where applicable seven days from receipt of payment by Telecom2 from other Communications Networks Operators.
- 7.2 Each party shall provide to the other invoices of all amounts due to it calculated in line with the provisions of this Agreement and the schedule(s) attached to it.
- 7.3 TELECOM2 shall be entitled upon giving a minimum of one month's notice to amend the rates for the Services provided under this Agreement.
- 7.4 For the avoidance of doubt TELECOM2 shall not be obliged to make any payments to the Customer in respect of any matter for which TELECOM2 and/or the Communications Networks Operator does not receive payment, unless the reason for such non-payment is due to an error, breach of Regulations or breach of contract by TELECOM 2. Further, TELECOM2 will not make any Service Payments to the Customer where (i) a Communications Networks Operator has withheld payment for the services or (ii) where TELECOM2 has been instructed to withhold payment by any Regulatory Authority or (iii) where TELECOM2 or a Communications Networks Operator is reasonably able to demonstrate that the Customer is making a claim for Service payment in respect of artificially inflated traffic or (iv) where TELECOM2 or a Communications Networks Operator is reasonably able to demonstrate that the basis for any such Service Payment has been generated fraudulently.
- 7.5 TELECOM2 shall be entitled to set off and deduct any undisputed amounts properly due or amounts equal to any invoices properly issued under this Agreement from any sums payable to the Customer. Should any Regulatory Authority impose any fine on the Customer or require the Customer to pay any charge or other sum, which applies or relates to the business or activities of the Customer then TELECOM2 shall be entitled to withhold, set off and/or deduct a sum equal to such fine, charge or sum from sums properly payable to the Customer under this Agreement and to pay the same to the relevant Regulatory Authority (provided always that such fine, charge or sum does not result solely from the activities or omissions of TELECOM2).
- 7.6 Where a Communications Networks Operator makes any refund to a User in respect of any Customers Service and requires TELECOM2 to make a refund to a User and/or a Regulatory Authority imposes a fine, penalty or other charge in relation to any use of the Services by the Customer which constitutes a breach of this Agreement, or otherwise relates to the business activities of the Customer, the Customer shall forthwith reimburse TELECOM2 for all such monies paid by TELECOM2 to the Communications Networks Operators, the User or the Regulatory Authority as applicable and TELECOM2 shall be entitled to withhold, set-off and/or deduct any such monies from monies payable by TELECOM2 to the Customer. Such reimbursement shall be without prejudice to any other rights or remedies TELECOM2 may have and shall amount to the actual amount of monies paid by TELECOM2 to the Communications Networks Operators, the User or the Regulatory Authority as applicable;
- 7.7 All payments due from the Customer to TELECOM2 and from TELECOM2 to the Customer are exclusive of Value Added Tax which shall be paid at the appropriate rate or rates in addition to the payment due in each case.
- 8. INTELLECTUAL PROPERTY**
- 8.1 This Agreement shall not operate as an assignment of or a licence or grant of any rights to the Customer of any intellectual property rights including but not limited to any copyright, registered design, trade mark or other proprietary right belonging to TELECOM2 (including without limit goodwill) or the Public Networks and TELECOM2 shall retain ownership of or other interest in any such intellectual property right to which TELECOM2 may be entitled. In particular but without prejudice to the generality of the foregoing all communication media and systems associated with the Services remain the property of TELECOM2 and the Customer shall not obtain any right or
- licence for the infrastructure, content, software or short codes associated with the Services.
- 8.2 For the avoidance of doubt nothing in this Agreement shall entitle the Customer to any right or licence to use the Communications Networks Operators or TELECOM2's names, logos or trade marks in any way whatsoever without the prior written consent of the relevant Communications Networks Operators or TELECOM2 as appropriate in each case and then only for the Term.
- 8.3 The Customer grants to TELECOM2 a personal, non-exclusive licence to use the Customer's intellectual property rights provided by the Customer solely in TELECOM2's own sales and promotional material and to the extent strictly necessary for TELECOM2 to perform its obligations under this Agreement.
- 8.4 The Customer shall indemnify TELECOM2 against all liabilities, damages, expenses, costs, actions, proceedings, claims and demands arising out of any breach of any party's Intellectual Property Rights
- 9. CONFIDENTIALITY**
- 9.1 Each party shall at all times keep confidential (and shall procure that its employees and agents shall keep confidential) any confidential information which it or they may acquire in relation to the business and affairs of the other party to this Agreement and shall not disclose such information except where required by law, with the written consent of that other party or in accordance with the order of a court of competent jurisdiction or under the instruction of a Regulatory Authority.
- 9.2 The obligations of each of the parties contained in clause 9.1 shall continue without limit in point of time but shall cease to apply to information coming in to the public domain other than by breach by any such party of its obligations contained in this Agreement provided that nothing contained in clause 9.1 shall prevent any party from disclosing any such information to the extent required in or in connection with legal proceedings arising out of this Agreement.
- 9.3 On termination of this Agreement, each party shall return to the other party all documents and material (and any copies thereof, or confirm all copies have been destroyed) containing, reflecting, incorporating or based on the other party's confidential information.
- 9.4 The provisions of this clause 9 shall remain in full force and effect notwithstanding the date of expiry or termination of this Agreement howsoever caused.
- 10. FORCE MAJEURE**
- 10.1 Neither the Customer nor TELECOM2 shall be liable in respect of any undisputed breach of this Agreement (other than failure to make payment of charges when due) due to any cause beyond its reasonable control including but not limited to Act of God, inclement weather, flood or escape of water, lightning or fire, industrial action, or lockouts, the act or omission of Government, any Regulatory Authority or other competent authority, war, terrorism, military operations, or riot, or congestion or non-operation of the Communications Networks Operators and the Public Networks or any of them. For the avoidance of doubt the Customer's inability to use any of the Service(s) by reason of failure of equipment or services not provided by TELECOM2 shall not relieve it from payment of TELECOM2's charges.
- 11. TERMINATION**
- 11.1 Each of the parties to this Agreement shall have the right at any time to terminate this Agreement immediately by giving notice in writing to the other party if the other party:-
- 11.1.1 commits a breach of this Agreement and fails to remedy the breach within 21 days of receipt of a written notice to do so or commits a breach of this Agreement not capable of remedy; or
- 11.1.2 has appointed over any of its assets a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer or if such other party shall pass a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction where the resulting entity is at least as credit worthy as such other party and assumes all of the obligations of such other party under this Agreement) or a court shall make an order to that effect or if such other party becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors;
- 11.1.3 Anything analogous to any of the events referred to in clause 11.1.2 under the law of any jurisdiction occurs in relation to such other party.
- 11.2 TELECOM2 shall have the right to terminate this Agreement immediately by giving notice in writing to the Customer if there is a change in control of the Customer (meaning a change in control of the ownership of more than 50% of the shares giving the right to attend and vote at general meetings).
- 11.3 Either party may terminate this Agreement at any time by giving 14 days' notice in writing to the other party if the other party is prevented from performing its obligations hereunder by reason of force majeure for any continuous period in excess of 60 days.
- 11.4 Without prejudice to the foregoing TELECOM2 shall be entitled at any time and with immediate effect to suspend access to any or all of the Services or terminate this Agreement or the provision of any of the Services hereunder in all cases without liability in the event that any licenses or any other permission or authorisation necessary for the operation of the Services or any of them or for interconnection with the Public Networks or for the provision to the Customer and/or to Customers and/or to Users of access to any Services is revoked by the industry regulatory authorities or in the event that this Agreement or anything contemplated hereunder is alleged or determined to be in contravention of any such licenses, permissions or authorisations or of any relevant legislation or of the rights of any third party or is or becomes or is alleged to have become otherwise unauthorised in any way.

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11.5. Upon termination of this Agreement for any reason:

11.5.1. Each party shall forthwith return at its cost the originals and any copies of all documents and materials provided to it by the other party and certify in writing to the other party that it has complied with the terms of this clause;

11.5.2. The Customer shall cease to promote market, advertise, sell or solicit customers for the Services;

11.5.3. or termination of the provision of any Services hereunder TELECOM2 shall as soon as practicable prevent access by the Customer to the relevant Services;

11.6. Termination of this Agreement (howsoever arising) shall (except as otherwise expressly set out in this Agreement) be without prejudice to any rights that either party may have against the other which have accrued up to the date of termination.

11.7. On termination of this Agreement howsoever arising those provisions of this Agreement capable of surviving and intended to survive termination including but not limited to clause 11.5 hereof and clauses 8 and 9 shall continue in full force and effect.

12. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

12.1. Except as expressly set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

12.2. Nothing in this Agreement shall limit or exclude TELECOM2's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; and

(b) fraud or fraudulent misrepresentation.

12.2 Subject to clause 12.2:

12.2.1 TELECOM2 shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, (i) for any increased costs or expenses, or (ii) for any loss of profit, business, contracts, revenues, or anticipated savings, or (iii) for any special indirect or consequential damage of any nature whatsoever arising under or in connection with this Agreement; and

12.2.2 TELECOM2's total liability to the Customer in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £500,000 in the aggregate provided always that such liability is not limited or excluded by any of the provisions contained in the policies of insurances maintained from time to time by TELECOM2 in which event TELECOM2's liability shall be limited to the amount of charges paid to TELECOM2 by the Customer under this Agreement during the year in which the circumstances giving rise to the claim for liability occurred.

12.3. Each of the foregoing clauses 12.1 to 12.2 is to be construed as a separate limitation (applying and surviving even if for any reason one or other of the said clauses is held inapplicable or unreasonable in any circumstances) and shall remain in force notwithstanding termination of this contract

12.4. No provision of this Agreement shall operate so as to exclude any liability of one of the parties in respect of a fraudulent misrepresentation made by that party to the other, or to restrict or exclude any remedy which the other party may have in respect of such misrepresentation.

12.5. Neither party shall be liable to the other in respect of any breach of this Agreement caused by revocation or alteration of any licence, permission or authorisation governing the operation of any of the Services, the Communications Networks Operators or any other Public Network from time to time.

12.6. TELECOM2 makes no warranty or representation that the provision to the Customer and/or to Customers and/or to Users of access to any Services or associated service is permitted under such licence, permission, authorisation or legislation

13. NOTICES

13.1. Any notice, invoice or other document which may be given by either party under this Agreement shall be deemed to have been duly served:

13.1.1. If delivered by Receipted electronic message at the time the automated read or delivery receipt or manual confirmation of receipt was generated

13.1.2. Confirmed facsimile transmission at the time of transmission

13.1.3. Registered or recorded post on receipt of a signature at the time of delivery

13.2. Notices to the Customer to be served to the last address notified via the website or by service under the terms of this agreement to Telecom2

13.3. Notices to TELECOM2 to be served to:

Customer Service Manager
Telecom2 Ltd.
37th Floor, 1 Canada Square,
London
E14 5AA

Email: info@telecom2.net
Fax: 020 8114 1006

13.4. Or such other addresses as the parties may notify from time to time

13.5. Notices shall be served on a working day between the hours of 09.00 and 17.00. If a notice is delivered after 17.00 it shall be deemed to have been delivered on the succeeding Working Day.

14. PARTNERSHIP

14.1. Nothing in this Agreement shall create or be deemed to create a commercial agency partnership or joint venture between the parties and neither party shall be responsible for the acts or omissions of the employees or representatives of the other party.

15. ASSIGNMENT

15.1. The Customer may not assign or transfer any of its rights or obligations under this Agreement nor may it sub contract the performance of any of its obligations hereunder without the prior written consent of TELECOM2.

16. PORTING

16.1. Numbers allocated to a Customer by Telecom2 may not be ported or otherwise transferred to any other communications provider within five years of the numbers coming into service. Porting after this date may take place subject to the Customer giving TELECOM2 one month's notice prior to the porting or transfer date.

17. ENTIRE AGREEMENT

17.1. This Agreement including the documents and instruments referred to herein supersedes all prior representations, arrangements, understandings and agreements between the parties whether written or oral relating to the subject matter hereof and sets forth the entire complete and exclusive agreement and understanding between the parties hereto relating to the subject matter hereof.

17.2. The Customer warrants to TELECOM2 that it has not relied on any representation, arrangement, understanding or agreement whether written or oral not expressly set out or referred to in this Agreement.

17.3. The Customer further agrees and undertakes to TELECOM2 that its remedies for breach of this Agreement shall be solely for breach of contract which remedies shall be subject to and in accordance with the provisions of this Agreement.

17.4. No provision of this Agreement including without limitation clause 12 shall operate so as to exclude any liability of one of the parties in respect of a fraudulent misrepresentation made by that party to the other or to restrict or exclude any remedy which the other party may have in respect of such representation.

18. LAW

18.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed according to English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.

19. DATA PROTECTION

The parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

20. THIRD PARTIES

20.1. Subject to clause 20.2, nothing in this Agreement is expressly or impliedly intended to confer on any third party any right to enforce any of its provisions pursuant to the Contracts (Rights of Third Parties) Act 1999.

20.2. Notwithstanding clause 20.1, pursuant to section 1 of the Contracts (Rights of Third Parties) Act 1999, PhonepayPlus shall be entitled to directly enforce against the Customer the terms in this Agreement under which the Customer is required to comply with the Codes of Practice and PhonepayPlus shall be entitled to directly enforce against the Customer any directions made by PhonepayPlus under the Codes of Practice.

21. The Customer shall fully indemnify and keep fully and effectively indemnified TELECOM2 and all members, officers, employees and agents of TELECOM2 against all liabilities, damages, expenses, costs, actions, proceedings, claims and demands and all alleged claims and demands including Regulatory fines and administration costs, however arising directly or indirectly out of or in consequence of any breach of this Agreement by the Customer, its Customers or any of them;

22. SOLICITATION

The Customer covenants with TELECOM2 that it shall not during the Term or within a period of 6 months thereafter directly or indirectly entice away or endeavour to entice away from TELECOM2 any person who has during the previous 12 months been employed by TELECOM2.

23. COUNTERPARTS

23.1. This Agreement may be executed in any number of counterparts, and by the parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

24. WAIVER



Telecom 2 Ltd Commercial Website Contract

24.1. Any waiver by TELECOM2 or the Customer of its rights in respect of a breach by the other party of any provision of this Agreement shall be limited to the particular breach and shall not operate in any way in respect of any future breach or continuance of the same breach, and no delay or failure on the part of either party to act upon a breach or to exercise its rights hereunder shall be deemed either a waiver of that breach or a waiver of that party's right to exercise any such rights.

25. SEVERABILITY

25.1. If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable then the remaining provisions of this Agreement shall continue in full force and effect. The judicial or other competent authority making such determination shall have the power to limit, construe or reduce the duration, scope, activity and/or area of such provision, and/or delete specific words or phrases as necessary to render such provision enforceable.

26. ALTERATIONS

26.1. No purported alteration of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each party to this Agreement.

SERVICES and ADD-ON's

27. Numbers

27.1. All numbers are on monthly rental basis, as per the current rate card, and are charged monthly in advance. Charges for Bronze, Silver, Gold and Platinum numbers, are a "one off" charge, as stated in current rate card and are charged in advance.

27.2. Pence per minute calls need to be in excess of 50 minutes per month, and pence per call calls in excess of 50 calls per month. If the totals calls/minutes are less than 50 per month, TELECOM2 reserve the right to take the numbers back, unless written permission has been granted by TELECOM2.

27.3. Where revenue from the inbound number rate does not cover the cost of the transfer call, a ppm charge will be charged to the customer as per the current rate card. These charges will be post paid.

28. Voicemail

28.1. Is a service that is a pre paid monthly charge. Rates are defined on current rate card

29. Fax2Email

29.1. Is a service that is a pre paid monthly charge. Rates are defined on current rate card.

30. Multi- conference

30.1. Is a service that is a pre paid monthly charge. Rates are defined on current rate card.

31. Time Based Routing

31.1. Is a service that is a pre paid monthly charge. Rates are defined on current rate card, plus see clause 27.3

31.2. Where revenue from the inbound number rate does not cover the cost of the transfer call, a ppm charge will be charged to the customer as per the current rate card. These charges will be post paid.

32. Call Queuing

32.1. Is a service that is a pre paid monthly charge. Rates are defined on current rate card.

33. Play File

33.1. Is a service that is a pre paid monthly charge. Rates are defined on current rate card.

34. Call Forwarding

34.1. Is a service that is a pre paid monthly charge. Rates are defined on current rate card.

34.2. Where revenue from the inbound number rate does not cover the cost of the transfer call, a ppm charge will be charged to the customer as per the current rate card. These charges will be post paid.

35. Multi Destination

35.1. Is a service that is a pre paid monthly charge. Rates are defined on current rate card.

Where revenue from the inbound number rate does not cover the cost of the transfer call, a ppm charge will be charged to the customer as per the current rate card. These charges will be post paid.